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 7 GAP INC.

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION

11
 12 JOEL RUIZ, On Behalf of Himself and All Others
 Similarly Situated,

13 Plaintiff,

14 v.
 15 GAP, INC., and DOES 1-9 inclusive,

16 Defendants.

17 Case No. C 07-5739 SC

**18 DECLARATION OF WILLIAM
 19 STERN IN SUPPORT OF
 DEFENDANT GAP INC.'S MOTION
 TO STRIKE PLAINTIFF'S CLASS
 DEFINITION OR, IN THE
 ALTERNATIVE, TO AMEND THE
 CLASS DEFINITION**

20 Date: September 5, 2008
 Time: 10:00 a.m.
 Room: Courtroom 1, 17th Floor
 Judge: Honorable Samuel Conti

21 Complaint filed: November 13, 2007

22 I, William L. Stern, hereby declare as follows:

23 1. I am a member of the State Bar of California and am admitted to practice before
 24 this Court. I am a partner in the law firm of Morrison & Foerster, LLP, attorneys for defendants
 25 in this action. These facts are known personally to me in that capacity. I submit this declaration
 26 in support of Defendant GAP Inc.'s Motion to Strike Plaintiff's Class Definition or, in the
 27 Alternative, to Amend the Class Definition. If called as a witness, I would testify to the facts
 28 listed below.

29 DECL. OF WILLIAM STERN ISO DEF. GAP INC.'S MOT. TO STRIKE PL.'S CLASS DEFINITION OR, IN THE
 ALTERNATIVE, TO AMEND THE CLASS DEFINITION – CASE NO. C 07-5739 SC
 sf-2423698

1 2. Prior to filing this motion, I engaged in a meet-and-confer negotiation with
 2 Plaintiff's counsel. On July 7, 2008, I mailed a letter to Ben Barnow and Tracy D. Rezvani,
 3 Plaintiff's counsel in this action, requesting that they stipulate to amend the class definition to
 4 only include those members of the putative class that are similarly situated to Plaintiff Joel Ruiz,
 5 i.e., persons who have been exposed to an increased risk of identity theft but who have not
 6 actually experienced identity theft as a result of the incident. A true and correct copy of this letter
 7 is attached to this declaration as Exhibit A-1. Ms. Rezvani responded in a letter dated July 14,
 8 2008, and refused to voluntarily amend the class definition. A true and correct copy of Ms.
 9 Rezvani's letter is attached to this declaration as Exhibit A-2. On July 15, 2008, I responded to
 10 Ms. Rezvani's letter and reiterated our position regarding why the class definition should be
 11 amended to exclude those persons who, unlike Mr. Ruiz, have suffered or claim to have suffered
 12 an actual identity theft as a result of the incident. A true and correct copy of this letter is attached
 13 to this declaration as Exhibit A-3. Ms. Rezvani responded in a letter dated July 22, 2008, stating
 14 that the parties "have to agree to disagree": A true and correct copy of this letter is attached to
 15 this declaration as Exhibit A-4.

16 3. On June 18, 2008, I took the deposition of Plaintiff Joel Ruiz at the San Francisco
 17 office of Morrison & Foerster LLP. Attached hereto as Exhibit B is a true and correct copy of
 18 excerpts from Mr. Ruiz's deposition transcript, in particular, pages 23, 25, 37, 73, 74, 113, and
 19 116-118. To the best of my recollection, the questions asked and the answers given on those
 20 excerpted pages are a true and correct recital of what was said.

21 4. On May 9, 2008, I propounded Defendant GAP Inc.'s First Set of Interrogatories
 22 to the Plaintiff. Attached hereto as Exhibit C is a true and correct copy of Plaintiff's Objections
 23 and Responses to Defendant GAP Inc.'s First Set of Interrogatories.

24 I declare under penalty of perjury that the foregoing is true and correct and this
 25 Declaration was executed in San Francisco, California, on this 1st day of August, 2008.

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By: /s/ William Stern

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